

## **The Servicemembers Civil Relief Act of 2003**

The Servicemembers Civil Relief Act of 2003 (SCRA) formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) is a federal law that gives all military members some important rights as they **enter active** duty. It covers such issues as rental agreements, security deposits, prepaid rent, eviction, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosure, civil judicial proceedings, and income tax payments. It also provides many important protections to military members while on active duty.

**The SCRA protects** active duty military members as well as reservists and members of the National Guard called to active duty (starting on the date active duty orders are received) and, in limited situations, dependents of military members (e.g., certain eviction actions).

To receive protection under some parts of the SCRA, the member must be prepared to show that military service has had a "material effect" on the legal or financial matter involved. Protection under the SCRA must be requested during the member's military duty or within 30 to 180 days after military service ends, depending on the protection being requested.

In many situations, the SCRA protections are not automatic, but require some action to invoke the Act. For example, to obtain a reduction of your pre-active duty mortgage or credit card interest rates, you should send your lender/creditor a written request and a copy of your mobilization orders.

**Legal advice available.** If you think that you have rights under the SCRA that may have been violated or that you are entitled to be shielded from a legal proceeding or financial obligation by the SCRA protections, you should discuss the matter with a legal assistance attorney or a civilian lawyer as soon as possible.

### **The Six Percent Rule**

For example, one of the most widely known benefits under the SSCRA, and now the SCRA, is the ability to reduce pre-service consumer debt and mortgage interest rates to 6% under certain circumstances. How does the 6% interest rule work?

Consider this example: Three months ago Mr. Smith and his wife bought a car for \$13,000, paying \$1,000 down and financing \$12,000 at 9% interest. Last week, Mr. Smith was called to active duty as Staff Sergeant (SSG) Smith. **Before** entering active duty Mr. Smith earned \$42,000 per year. As a staff sergeant he now earns almost \$27,000 (derived from what the current DFAS pay scale is for a staff sergeant with 12 years of service). Because of the SCRA, SSG Smith may ask the car financing company to lower the interest rate to 6% while he is on active duty – military service has *materially affected* his ability to pay since he is earning less money on active duty than before. SSG Smith should inform the finance company of his situation in writing with a

copy of the orders to his active duty attached, and request immediate confirmation that they have lowered his interest rate to 6% under the SCRA. The finance company must adjust the interest down to 6% unless it goes to court. In court, the finance company, not SSG Smith, would have to prove that SSG Smith's ability to pay the loan has not been materially affected by his military service. The 3% difference is forgiven or excused, and SSG Smith need not pay that amount. SSG Smith does need to continue making the monthly payments of principal and interest (at 6%) to avoid his account being considered delinquent. Continuing payments should also avoid any adverse credit reports from the finance company. (See Section 207, SCRA)

**Note:** In some situations civilian employers have agreed to pay the military member the difference between the military pay and the civilian pay earned before the call to active duty. In most such situations, military service has not materially affected the member's ability to pay so it is unlikely that the SCRA 6% interest limitation applies. Of course, if the military member's expenses increased (for example, the member must pay for a second apartment at the duty station, or the member's spouse gave up her job to move with him) military service might have materially affected the member and the SCRA 6% interest limit could apply.

What if instead of buying the car before he came on active duty, SSG Smith left his car at home for his wife and purchased a used car at his duty station. To do so, he borrowed \$4,000 at 9% interest. Since SSG Smith took this debt after entering active duty the SCRA 6% interest limit does not apply.

**Need specific legal advice?** If you think being called to active military service has reduced your ability to meet your financial obligations, contact your nearest legal assistance office to see if SCRA applies.

### **Delay of Court and Administrative Proceedings**

A major change provided by the SCRA is that it permits active duty servicemembers, who are unable to appear in a court or administrative proceeding due to their military duties, to postpone the proceeding for a mandatory minimum of ninety days upon the servicemember's request. The request must be in writing and (1) explain why the current military duty materially affects the servicemember's ability to appear, (2) provide a date that the servicemember's duties preclude his appearance and that he is not authorized leave at the time of the hearing. This letter or request to the court will not constitute a legal appearance in court. Further delays may be granted at the discretion of the court, and if the court denies additional delays, an attorney must be appointed to represent the servicemember. (See Section 202, SCRA)

### **Termination of Leases**

Another significant change provided in the SCRA, is found in Section 305. The prior law only allowed the termination of pre-service "dwelling, professional, business, agricultural, or similar" leases. The new provision in the SCRA allows termination of

leases by active duty servicemembers who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more. The SCRA also includes automobiles leased for personal or business use by servicemembers and their dependents. The pre-service automobile lease may be cancelled if the servicemember receives active duty orders for a period of one hundred and eighty (180) days or more. The automobile lease entered into while the servicemember is on active duty may be terminated if the servicemember receives PCS orders to a (1) location outside the continental United States or (2) deployment orders for a period of one hundred and eighty (180) days or more. (See Section 305, SCRA)

### **Eviction for Nonpayment of Rent**

Although the SCRA does not excuse soldiers from paying rent, it does afford some relief if military service makes payment difficult. Military members and their dependents (in their own right) have some **protection from eviction** under the Servicemembers Civil Relief Act (SCRA), Section 301.

The landlord must obtain a court order to evict a military member or his/ her dependents. The court must find the member's failure to pay is **not** materially affected by his/ her military service. Material effect is present where the servicemember does not earn sufficient income to pay the rent. Where the member is materially affected by military service, the court *may* stay the eviction (three months unless the court decides on a shorter or longer period in the interest of justice) when the military member or dependents request it. There is no requirement that the lease be entered into before entry on active duty, and the court could make any other "just" order under section 301 of the SCRA. The requirements of this section are:

- (1) The landlord is attempting eviction during a period in which the service member is in military service or after receipt of orders to report to duty;
- (2) The rented premises is used for housing by the spouse, children, or other dependents of the service member; and
- (3) **The agreed upon rent does not exceed \$2,400 per month.** Soldiers threatened with eviction for failure to pay rent should see a legal assistance attorney. (This amount subject to change in future years. As of 2008 the ceiling is \$2,831.13.)

### **Default Judgment Protection**

If a default judgment is entered against a servicemember during his or her active duty service, or within 60 days thereafter, the SCRA allows the service member to reopen that default judgment and set it aside. In order to set aside a default judgment, the servicemember must show that he or she was prejudiced by not being able to appear in person, and that he or she has good and legal defenses to the claims against him/ her. The servicemember must apply to the court for relief within 90 days of the termination or release from military service. (See Section 201, SCRA)

## **Life Insurance Protection**

The SCRA also permits the servicemember to request deferment of certain commercial life insurance premiums and other payments for the period of military service and two years thereafter. If the Department of Veteran Affairs approves the request, the United States will guarantee the payments, the policy shall continue in effect, and the servicemember will have two years after the period of military service to repay all premiums and interest. The SCRA increases the amount of insurance this program will cover to the greater of \$250,000.00 or the maximum limit of the Servicemembers Group Life Insurance. (See Section 401, SCRA)

## **State Taxation Clarification**

The SCRA provides that a nonresident servicemember's military income and personal property are not subject to state taxation if the servicemember is present in the state only due to military orders. The state is also prohibited from using the military pay of these nonresident servicemembers to increase the state income tax of the spouse. Under prior law, some states did not tax the nonresident servicemember directly, but did include the nonresident servicemember's income in the spouse's income, resulting in higher taxes for the spouse. (See Section 511, SCRA)

## **Health Insurance Reinstatement**

The SCRA further provides for the reinstatement of any health insurance upon termination or release from service. The insurance must have been in effect before such service commenced and terminated during the period of military service. The reinstatement of the health insurance is not subject to exclusions or a waiting period if the medical condition in question arose before or during the period of service, the exclusion or waiting period did not apply during coverage, and the medical condition has not been determined by the Secretary of Veteran Affairs to be a disability incurred or aggravated by military service. The reinstatement of health insurance protection does not apply to a servicemember entitled to participate in employer-offered insurance (See rules regarding employer offered health insurance in the Uniformed Services Employment and Re-Employment Act). And finally, the servicemember must apply for the reinstatement of the health insurance within 120 days after termination or release from military service. As always, submit such request to the insurance company in writing with a copy of the orders for active duty and release from active duty. (See Section 704, SCRA)